

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MEGAN WHITE; JERONIMO AGUILAR;	)	Case No. 2:21-CV-02211-JAM-SCR
LOREN WAYNE KIDD; LYRIC NASH;	)	
NICOLLETTE JONES; and ODETTE	)	
ZAPATA;	)	
	)	<b><u>COURT'S FINDINGS OF FACT AND</u></b>
	)	<b><u>CONCLUSIONS OF LAW</u></b>
Plaintiffs,	)	
	)	
v.	)	
	)	
SACRAMENTO POLICE DEPARTMENT;	)	
THE CITY OF SACRAMENTO; and	)	
DANIEL HAHN;	)	
	)	
Defendants.	)	

I. INTRODUCTION

Plaintiffs Megan White, Jeronimo Aguilar, Loren Wayne Kidd, Lyric Nash, Nicollette Jones and Odette Zapata ("Plaintiffs") are six self-described racial justice protestors who participated in vigils, rallies and demonstrations that took place in Sacramento on May 29, May 30, May 31 and June 1, 2020. The protests were in response to the May 25, 2020, killing of George Floyd by Minneapolis, Minnesota police officer Derek Chauvin. Plaintiffs and hundreds of other demonstrators took to the streets of Sacramento calling for police accountability. These racial justice

1 protests sometimes lasted as long as fourteen hours, beginning  
2 around noon and ending around 2 a.m. They took place at multiple  
3 sites around Sacramento including police headquarters on Freeport  
4 Boulevard, 12th Street and the entrance to Highway 99, the area  
5 around the State Capitol, Cesar Chavez Park on 10th Street, the  
6 Sacramento County Main Jail on 6th and I Streets, the entrance to  
7 Highway 5 near Old Sacramento, and midtown Sacramento on J Street  
8 between 19th and 21st Streets.

9 The Sacramento Police Department ("SPD" or "Defendant") was  
10 the primary law enforcement agency assigned to monitor and control  
11 the demonstrations. SPD at times received assistance from the  
12 Sacramento County Sheriff's Department, the California Highway  
13 Patrol and the California National Guard. Plaintiffs contend that  
14 SPD responded to Plaintiffs and other protestors with  
15 disproportionate, illegal and excessive force. The evidence in  
16 this case included Body Worn Camera ("BWC") footage showing SPD and  
17 other law enforcement officers shooting less lethal impact  
18 munitions (pepper balls and bean bags), 40MM projectiles, and  
19 chemical weapons (tear gas) at the protestors. Plaintiffs claimed  
20 that SPD's use of force and tactics employed during these  
21 demonstrations were illegal and excessive.

22 Plaintiffs filed this lawsuit against SPD seeking monetary  
23 compensation and permanent injunctive relief for the injuries they  
24 sustained during the demonstrations and their loss of civil rights  
25 under the First, Fourth and Fourteenth Amendments, the California  
26 Ralph Act and the California Bane Act. Plaintiffs claimed that  
27 SPD's customs and practices, as well as its failure to properly  
28 train and discipline its police officers, were the moving forces

1 behind the constitutional violations they suffered. SPD denied all  
2 of Plaintiffs' claims and an eight-day bench trial was held before  
3 this Court from March 24 to April 3, 2025.

4 Immediately prior to the beginning of the bench trial, the  
5 parties informed the Court that they had reached a settlement of  
6 Plaintiffs' monetary claims. As a result of the settlement, the  
7 focus of the bench trial was Plaintiffs' request for permanent  
8 injunctive relief.<sup>1</sup> At the Court's request, Plaintiffs filed a  
9 Proposed Order Granting Permanent Injunction (ECF No. 132) which  
10 Defendants objected to (ECF No. 133) and which the Court utilized  
11 as the guidepost for deciding the issues raised by the parties in  
12 this action.

13 As discussed in detail below, while the Court finds that  
14 Plaintiffs introduced sufficient evidence to satisfy their burden  
15 of proof that at least one of their claims succeeds on the merits,  
16 they failed to demonstrate that they have standing -- and therefore  
17 the Court has jurisdiction -- for permanent injunctive relief.  
18 Further, the Court finds that Plaintiffs did not introduce  
19 sufficient evidence to satisfy the traditional factors the Court  
20 must weigh before granting injunctive relief. Indeed, there was  
21 little, or no evidence introduced at trial by Plaintiffs which  
22 supported their argument that there is a substantial risk that the  
23 harm they suffered during the May 2020 protests will occur going  
24 forward. Since these protests in 2020, the evidence shows that the

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25  
26 <sup>1</sup>Plaintiffs' Amended Complaint (ECF No. 31) included a request for  
27 declaratory relief (Id. p. 47) but this prayer for relief was  
28 neither mentioned nor raised by Plaintiffs during the trial. While  
Plaintiffs' Proposed Findings of Fact and Conclusions of Law  
discuss the declaratory relief request, this Court's Order focuses  
primarily on the issue of Plaintiffs' prayer for a permanent  
injunction.

SPD has made numerous significant modifications and changes to its policies and practices concerning the use of less lethal force during public protests. Plaintiffs did not introduce any evidence of allegedly unconstitutional conduct by SPD during public protests over the past five years from which this Court could infer or conclude that the permanent injunctive relief sought by Plaintiffs was necessary or mandated as a matter of law.

In order to grant injunctive relief here, the Plaintiffs were required to show that SPD is engaged in a pervasive pattern of police conduct that flows from an intentional policy or plan on its part. While Plaintiffs' evidence demonstrated that SPD's policies, practices and lack of training was a moving force behind Plaintiffs' injuries in May 2020, these past wrongs do not in themselves amount to a real and immediate threat of injury requiring Court intervention at this time. Case law clearly counsels caution with respect to federal intervention in state law enforcement matters. Plaintiffs' evidence did not prove that they face a realistic threat from future applications of SPD's current policies and practices regarding the use of less lethal force during peaceful protests. Without more, this Court, as a matter of law, declines Plaintiffs' request to enjoin and monitor SPD through the issuance of a permanent injunction.

## II. FINDINGS OF FACT

### **The Protests**

1. The May 2020 murder of George Floyd in Minneapolis, Minnesota sparked a series of protests throughout Sacramento.

2. The protests were aimed at demanding police accountability.

1           3.     Sacramento community members found out about the protests  
2 through news sources, social media, and word of mouth.

3           4.     Officers of the SPD were assigned to and engaged  
4 protestors at protest events that took place in the streets of  
5 Sacramento between May 29 and June 1, 2020.

6           5.     The City of Sacramento received assistance from  
7 neighboring law enforcement agencies, including the Sacramento  
8 County Sheriff's Department, the California Highway Patrol, and the  
9 California National Guard.

10          6.     These mutual aid agencies reported to and were overseen  
11 by SPD officials.

12          7.     Officers of the SPD deployed tear gas canisters, rubber  
13 bullets, bean bag projectiles, pepper balls, and flash bang  
14 grenades into areas occupied by protestors at various times between  
15 May 29, 2020 and June 1, 2020.

16          8.     Aguilar, Zapata, Kidd, and Jones each attended protests  
17 on May 29, 2020.

18          9.     Protestors marched around downtown and rallied at the  
19 Sacramento Main Jail.

20          10.    SPD officers shot protestors with rubber bullets and  
21 pepper balls.

22          11.    Another protest on May 29, 2020 started at Cesar Chavez  
23 Park.

24          12.    Protestors marched from the park to a location around  
25 thirty to fifty yards from an entrance to Highway 99.

26          13.    SPD began using batons to hit protestors, including Kidd,  
27 who was not engaged in violent behavior at the time he was struck.

28          14.    Aguilar arrived at the protest near Highway 99.

1        15. Police began firing pepper balls and chemical weapon  
2 cannisters into the crowd.

3        16. Aguilar did not hear an audible warning about the  
4 deployment of less lethal munitions.

5        17. Aguilar was shot twice with impact munitions.

6        18. Nash and Jones each attended a protest on May 30, 2020.

7        19. Late in the night and into the early morning of May 31,  
8 2020, protestors clashed with police on J street between 20th and  
9 21st streets.

10       20. SPD used an overwhelming barrage of tear gas, rubber  
11 bullets, beanbags, and pepper bullets.

12       21. Jones approached SPD officers and asked them to stop  
13 shooting protestors.

14       22. Later, Jones was shot eleven times with rubber bullets.

15       23. Jones was shot in the knee, right shoulder, and groin.

16       24. As Jones ran away, she was shot in the back, shoulder,  
17 legs, buttocks, and hand.

18       25. Jones' finger was broken in two places.

19       26. At the time she was shot, Jones did not pose a threat to  
20 the safety of SPD officers or others.

21       27. Nash, Zapata, and Jones each attended a protest on May  
22 31, 2020.

23       28. Nash and Kidd attended a vigil at Cesar Chavez Plaza on  
24 June 1, 2020.

25       29. The protestors began marching from the park but were  
26 blocked by a police line.

27       30. SPD officers began using less lethal munitions on the  
28 protestors.

1 31. Kidd was hit with pepper balls.

2 32. Kidd also was shot in his chest with a large projectile  
3 that was either a rubber bullet or a gas cannister.

4 33. As a result of their injuries, Plaintiffs' intent to  
5 protest has been chilled.

6 34. Kidd intends to protest but his willingness and ability  
7 has been chilled.

8 35. Nash was traumatized by SPD's actions and does not  
9 protest as frequently.

10 36. White has been completely deterred from protesting.

11 37. Aguilar also has stopped protesting, citing concern about  
12 SPD actions.

13 **SPD's Review of Complaints and Uses of Force**

14 38. Sacramento General Affairs received over ninety  
15 complaints against SPD officers arising from use of force during  
16 the protests.

17 39. If an officer had received "significant discipline," such  
18 as "days off," Chief Hahn would have been the person to approve  
19 that discipline.

20 40. No officer received significant discipline as a result of  
21 the complaints filed against SPD officers arising from use of force  
22 during the protests.

23 41. SPD established the Use of Force Review Board in July  
24 2020.

25 42. The Board met monthly to review uses of force and  
26 determine whether they were in policy.

27 43. The Professional Standards Unit prepared a spreadsheet of  
28 the uses of force over the course of the George Floyd protests.

1           44. The Board accepted the spreadsheet as accurate  
2 information that it used as part of its decision-making processes.

3           45. The spreadsheet contained 227 incidences of use of force.

4           46. The Board prepared monthly memoranda summarizing its  
5 findings.

6           47. The Board found that the vast majority of uses of force  
7 were within policy.

8           48. Some officers whose actions were not within policy  
9 received a watch level retraining, meaning that their supervisor  
10 would address the situation.

11           49. Watch level retraining is not considered discipline by  
12 SPD.

13           50. The Board considered the use of force within policy where  
14 officers utilized less lethal munitions against protestors who  
15 refused to disperse.

16           51. SPD utilizes Blue Teams tracking software to log its  
17 officers' uses of force.

18           52. SPD logged 148 uses of force in Blue Teams.

19           53. 140 of these uses of force were found to be within  
20 policy.

21           54. Of the 8 incidents that were not within policy, 5 were  
22 remedied by watch level retraining.

23           55. Of the 3 remaining incidents, only 2 were referred to  
24 Internal Affairs, and those officers were exonerated.

25           56. As such, of the 148 logged uses of force in Blue Teams,  
26 no officer was disciplined.

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1 **SPD Policies and Training in 2020**

2 57. SPD had two prevailing sources of policy for use of force  
3 during the 2020 protests: the Riot and Crowd Control Manual ("Riot  
4 Manual") and General Order ("GO") 580.02, which governed use of  
5 force.

6 58. SPD's policy governing "Less Lethal Weapon Systems," GO  
7 580.12, required officers to comply with GO 580.02 when using less  
8 lethal weapons.

9 59. SPD officers had access to long-range acoustic devices  
10 ("LRAD") mounted on a patrol vehicles that could have been deployed  
11 for warnings for the large crowds, but they were not used on May  
12 29, 2020, and it is unclear if they were used on other nights.

13 60. SPD's policy on "Less Lethal" munitions instructed that  
14 they were appropriate for "crowd control and civil unrest  
15 incidents."

16 61. The policy also allowed "multiple officers with less  
17 lethal weapon systems" to be utilized simultaneously in the same  
18 incident.

19 62. SPD's Chemical Agents Manual made the statement that  
20 chemical agents "are generally considered harmless."

21 63. SPD's less lethal training made no distinction between  
22 deployment of these devices on an individual and deploying it into  
23 crowds, despite knowing there was "no way" to ensure accuracy of  
24 the weapons when shot into a crowd.

25 64. SPD taught officers that they could use "overwhelming  
26 less lethal" as an option for crowd control.

27 65. SPD trained officers on crowd control every other year  
28 during a five hour block of instruction, averaging two and a half

1 hours per year.

2 66. SPD did not provide specific training on the use of less  
3 lethal munitions in a crowd management context.

4 67. During the George Floyd protests, some SPD officers  
5 expressed a lack of knowledge about the operation of less lethal  
6 munitions.

7 68. In 2019, the California Department of Justice ("DOJ")  
8 identified various policies, practices, and procedures of the SPD  
9 that increased the risk of harm to individuals and recommended that  
10 SPD adopt changes and training to address them.

11 69. This 2019 DOJ report highlighted the need for SPD's Use  
12 of Force policy to affirm the importance of proportionality,  
13 sanctity of life, and de-escalation.

14 70. Additionally, the California DOJ recommended a standalone  
15 policy regarding use of force reporting and investigations in 2019.

16 71. The changes to SPD's use of force policy, reporting, and  
17 investigations recommended by DOJ had not been implemented as of  
18 May 30, 2020.

19 72. In a "Phase II" report released in 2020, the California  
20 DOJ identified various policies, practices, and procedures of the  
21 SPD that increased the risk of harm to individuals and recommended  
22 that SPD adopt changes and training to address them.

23 73. The Phase II report recommended the revision of SPD's use  
24 of force policy that permitted officers to use "overwhelming  
25 force."

26 74. In 2020, DOJ found "lapses in SPD's use of force  
27 reporting," a "lack of thoroughness and completeness [in] nearly  
28 one fifth of use of force case files," and that in 2020, SPD still

1 lacked a standalone policy dedicated to use of force reporting and  
2 investigations.

3 75. Dr. Ed Maguire testified that the Use of Force policies  
4 in effect at the time of the protests were inconsistent with  
5 generally accepted police practices.

6 76. Dr. Maguire testified that the Crowd and Riot Control  
7 policy in effect at the time of the protests was inconsistent with  
8 generally accepted police practices.

9 77. Dr. Maguire found SPD's use of force training inadequate  
10 or inconsistent with best practices.

11 78. SPD Chief Katherine Lester said that following the 2020  
12 protests, it was clear that the department had training failures.

13 **Changes in SPD Policy and Training Since 2020**

14 79. Since the George Floyd protests, there have been numerous  
15 changes to SPD policy and training.

16 80. In 2021, the California legislature enacted Government  
17 Code Section 7072, which requires police departments to issue  
18 annual reports regarding the use of its military equipment.

19 81. SPD's less lethal weapons are military equipment for the  
20 purposes of this Section.

21 82. In 2022, the California legislature enacted Penal Code  
22 Section 13652 which served to restrict circumstances when officers  
23 may deploy less lethal munitions.

24 83. This Section restricts the use of these tools when  
25 dispersing assemblies, protests, or demonstrations.

26 84. SPD now includes Section 13652 in its policies and  
27 training.

28 85. Since 2022, SPD has increased its training given to

officers on the use of less lethal munitions.

86. SPD now provides specific and separate training for use of less lethal munitions in crowd management scenarios.

87. SPD has replaced its Crowd and Riot Control Manual with the First Amendment Manual.

88. The First Amendment Manual requires Incident Commander approval for use of chemical agents and kinetic energy projectile in crowd management situations.

89. Prior to the 2024 presidential election, SPD conducted a crowd management refresher training for all their specialty units and detectives, who are typically the first group of officers brought in to manage the events

### III. OPINION

#### A. Success on the Merits

To be entitled to a permanent injunction, the party seeking the injunction must actually succeed on the merits. Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 546 n. 12 (1987). Accordingly, the Court cannot grant an injunction unless it holds that Plaintiffs have prevailed on at least one of their claims.

#### 1. Excessive Force

"Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." Graham v. Connor, 490 U.S. 386, 396 (1989). The "facts and circumstances" of each case includes "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the

1 officers or others, and whether [the suspect] is actively  
2 resisting arrest or attempting to evade arrest by flight.” Id.  
3 Courts also consider “the type and amount of force inflicted.”  
4 Deorle v. Rutherford, 272 F.3d 1272, 1279 (9th Cir. 2001). “The  
5 ‘reasonableness’ inquiry in an excessive force case is an  
6 objective one: the question is whether the officers’ actions are  
7 ‘objectively reasonable’ in light of the facts and circumstances  
8 confronting them, without regard to their underlying intent or  
9 motivation.” Graham, 490 U.S. at 397. The balancing test  
10 mandated by Graham “entails consideration of the totality of the  
11 facts and circumstances in the particular case.” Blanford v.  
12 Sacramento Co., 406 F.3d 1110, 1115 (9th Cir. 2005) (citing  
13 Graham, 490 U.S. at 396).

14 Here, Plaintiffs Jones, Aguilar, Kidd, Nash, and White were  
15 harmed by less lethal weapons, including impact munitions,  
16 chemical agents, baton strikes, and/or personal body weapons used  
17 by SPD at protests. Plaintiffs did not experience this  
18 significant force just once. Rather, the evidence shows that SPD  
19 used force against Plaintiffs multiple times, sometimes in rapid  
20 succession.

21 None of the Plaintiffs were engaged in any significant  
22 criminal activity when they were subjected to SPD’s use of less  
23 lethal weapons. It is unreasonable to use less lethal force,  
24 including impact munitions and chemical agents, against  
25 individuals “who were suspected of only minor criminal activity”  
26 or who “engaged in passive resistance, at most, by failing to  
27 immediately disperse if and when such an order was given.” Nelson  
28 v. City of Davis, 685 F.3d 867, 885 (9th Cir. 2012). The fact

1 that a plaintiff "did not commit any chargeable offense, or, at  
2 most, a misdemeanor, weighs heavily against the defendants' use of  
3 force." Id. at 880.

4 Similarly, Defendants offered no evidence that any of the  
5 Plaintiffs posed an immediate threat to officer safety at the time  
6 force was used against them, and none of the Plaintiffs were  
7 evading arrest or engaged in active resistance when they were  
8 subjected to SPD's less lethal force. The mere fact that some  
9 Plaintiffs may have remained present after a dispersal order is  
10 insufficient to justify Defendants' uses of force. A desire to  
11 disperse crowds quickly does not make the use of force reasonable.  
12 See Nelson, 685 F.3d at 880, 882 (rejecting the argument that  
13 police's "use of the pepperball guns was necessary because their  
14 prior attempts to disperse the crowd had failed," and noting that  
15 "[a]lthough the officers plainly had an interest in clearing the  
16 apartment complex . . . the desire to do so quickly, in the  
17 absence of any actual exigency, cannot legitimize the application  
18 of force when it is not otherwise justified").

19 Based on the totality of the circumstances, the Court finds  
20 that Plaintiffs' Fourth Amendment rights were violated by  
21 excessive force. Because Plaintiffs sought trial solely for  
22 injunctive relief, and because they only need prevail on a single  
23 claim to seek such relief, the Court does not consider the merits  
24 of Plaintiffs' remaining claims.

## 25 2. Monell Liability

26 The Court next determines if the City is liable for  
27 Plaintiffs' constitutional injuries. Plaintiffs can establish  
28 liability by showing: (1) the police officers committed the

1 constitutional violations pursuant to a policy or custom; (2) the  
2 police officers who violated Plaintiffs' constitutional rights were  
3 not discharged or reprimanded; or (3) the constitutional violations  
4 flowed from a failure to train.

5 1. Policy or Custom

6 "Absent a formal governmental policy, [a plaintiff] must show  
7 a 'longstanding practice or custom which constitutes the standard  
8 operating procedure of the local government entity.'" Trevino v.  
9 Gates, 99 F.3d 911, 918 (9th Cir. 1996) (citation omitted). "The  
10 custom must be so 'persistent and widespread' that it constitutes a  
11 'permanent and well settled city policy.'" Id. (citation omitted).  
12 "An isolated or sporadic incident cannot form the basis of Monell  
13 liability for an improper custom." Saved Magazine v. Spokane  
14 Police Dep't, 19 F.4th 1193, 1201 (9th Cir. 2021) (cleaned up).  
15 But Monell liability can exist based on a series of events over a  
16 short period of time. See Menotti v. Seattle, 409 F.3d 1113, 1148  
17 (9th Cir. 2005) ("[A] policy may be inferred due to the widespread  
18 practices or evidence of repeated constitutional violations" that  
19 occurred during protests on a single day). Indeed, in large-scale  
20 protests "when the department is executing an organized,  
21 department-wide response, one can presume that the police chief was  
22 in control of his department, either directing that response  
23 himself or—at the very least—ratifying the actions of his  
24 subordinates. Therefore, it becomes easier to infer that the  
25 repeated conduct of individual police officers is really the  
26 conduct of the department, particularly when . . . the officers who  
27 used force did not meaningfully deviate from the department's plan  
28 for how to control the crowds." Martinez v. City of Santa Rosa,

1 499 F.Supp.3d 748, 750 (N.D. Cal. 2020).

2 Plaintiffs' police practices expert, Dr. Ed Maguire, testified  
3 that the Use of Force and Crowd and Riot Control policies in effect  
4 at the time of the George Floyd protests were inconsistent with  
5 generally accepted police practices. SPD had a policy of using  
6 "overwhelming less lethal" during crowd control situations such as  
7 protests. Accordingly, by indiscriminately firing less lethal  
8 munitions into the crowds, SPD officers who violated Plaintiffs'  
9 constitutional rights were acting pursuant to SPD policy.

10 2. Failure to Discharge or Reprimand

11 "Policy or custom may be inferred if, after the [incident]  
12 . . . officials took no steps to reprimand or discharge the guards,  
13 or if they otherwise failed to admit the guards' conduct was in  
14 error." McRorie v. Shimoda, 795 F.2d 780, 784 (9th Cir. 1986); see  
15 also Gomez v. Vernon, 255 F.3d 1118, 1127 (9th Cir. 2001) ("A  
16 policy or custom may be found either in an affirmative proclamation  
17 of policy or in the failure of an official 'to take any remedial  
18 steps after the violations.'").

19 SPD did not discipline any officers for the use of less lethal  
20 munitions at the protests, nor did they implement any training to  
21 address "training failures." The vast majority of "Less Lethal"  
22 weapons deployments during the protests were found to be "within  
23 policy." Because officials did not reprimand the officers who  
24 committed the constitutional violations, a policy may be inferred.  
25 See McRorie, 795 F.2d at 784.

26 3. Failure to Train

27 "Failure to train may constitute a basis for Monell liability  
28 where the failure amounts to deliberate indifference to the rights

1 of those who deal with municipal employees.” Benavidez v. County  
2 of San Diego, 993 F.3d 1134, 1153 (9th Cir. 2021). “To allege a  
3 failure to train, a plaintiff must include sufficient facts to  
4 support a reasonable inference: (1) of a constitutional violation;  
5 (2) of a municipal training policy that amounts to a deliberate  
6 indifference to constitutional rights; and (3) that the  
7 constitutional injury would not have resulted if the municipality  
8 properly trained their employees.” Id. at 1153-54 (citation  
9 omitted). A pattern of similar constitutional violations by  
10 untrained employees is ordinarily necessary to demonstrate  
11 deliberate indifference for purposes of failure to train.” Connick  
12 v. Thompson, 563 U.S. 51, 61 (2011).

13       The evidence revealed that SPD’s training was minimal and  
14 incomplete prior to the 2020 protests. It did not provide specific  
15 training regarding the use of less lethal weapons in crowd  
16 settings. Dr. Maguire found SPD’s use of force training inadequate  
17 or inconsistent with best practices. Some officers during the  
18 protests expressed that they did not know how to operate less  
19 lethal munitions. Even Chief Lester acknowledged that there were  
20 training failures leading up to the 2020 protests. SPD’s failure  
21 to train amounted to a deliberate indifference, and Plaintiffs’  
22 constitutional injuries would not have occurred if SPD properly  
23 trained its officers.

24       The Court finds that Defendants are liable for Plaintiffs’  
25 constitutional violations on the basis of policy or custom,  
26 failure to discipline, and failure to train.

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1           B.    Injunctive Relief

2                   1.   Standing

3           A plaintiff who has standing to seek damages does not  
 4 necessarily have standing to request injunctive relief. Hodgers-  
 5 Durgin v. de la Vina, 199 F.3d 1037, 1040 n.1 (9th Cir. 1999).  
 6 Instead, “a plaintiff must demonstrate standing separately for each  
 7 form of relief sought.” Mayfield v. United States, 599 F.3d 964,  
 8 969 (9th Cir. 2010). For injunctive relief, “[a] plaintiff  
 9 threatened with future injury has standing to sue ‘if the  
 10 threatened injury is certainly impending, or there is a substantial  
 11 risk the harm will occur.’” In re Zappos.com, Inc., 888 F.3d 1020,  
 12 1024 (9th Cir. 2018) (quoting Susan B. Anthony List v. Driehaus,  
 13 573 U.S. 149, 158 (2014)). “Past exposure to illegal conduct does  
 14 not in itself show a present case or controversy regarding  
 15 injunctive relief . . . if unaccompanied by any continuing, present  
 16 adverse effects.” City of Los Angeles v. Lyons, 461 U.S. 95, 102  
 17 (1983) (quoting O’Shea v. Littleton, 414 U.S. 488, 495–96 (1974)).  
 18 Moreover, where a party is seeking injunctive relief against a  
 19 state agency, there must be “proof that officers within the agency  
 20 have engaged in a persistent pattern of misconduct.” Thomas v.  
 21 County of Los Angeles, 978 F.2d 504, 508 (9th Cir. 1992) (citing  
 22 Allee v. Medrano, 416 U.S. 802, 815–16 (1974)). This standard  
 23 includes “only that conduct ‘which flowed from an intentional,  
 24 concerted, and indeed conspiratorial effort to deprive [the  
 25 victims] of their [constitutional] rights.’” Id. (quoting Rizzo v.  
 26 Goode, 423 U.S. 362, 375 (1976)).

27           Although “past wrongs are evidence bearing on whether there is  
 28 a real and immediate threat of repeated injury,” O’Shea, 414 U.S.

1 at 496, "past wrongs do not in themselves amount to [a] real and  
2 immediate threat of injury necessary to make out a case or  
3 controversy." Lyons, 461 U.S. at 103. Accordingly, to establish  
4 this Court's jurisdiction to grant injunctive relief, Plaintiffs  
5 needed to show that there is a "real and immediate threat" of  
6 future injury. The Ninth Circuit stated that "the factors that are  
7 important in predicting the likelihood of future violations"  
8 include "the degree of scienter involved; the isolated or recurrent  
9 nature of the infraction; the defendant's recognition of the  
10 wrongful nature of his conduct; the extent to which the defendant's  
11 professional and personal characteristics might enable or tempt him  
12 to commit future violations; and the sincerity of any assurances  
13 against future violation." Fed. Election Comm'n v. Furgatch, 869  
14 F.2d 1256, 1263 n.5 (9th Cir. 1989).

15 Based on the evidence, or lack thereof, at trial, the Court  
16 finds that there is not a significant risk of Plaintiffs' injuries  
17 reoccurring such that permanent injunctive relief is warranted.  
18 The George Floyd protests uniquely demanded a large scale response  
19 that included mutual aid agencies. Plaintiffs failed to identify  
20 a single example since 2020 where SPD has used less lethal  
21 munitions in response to a protest that resulted in violations of  
22 constitutional law. The Court cannot conclude that there is a  
23 real and immediate threat of these harms reoccurring given the  
24 complete absence of evidence supporting Plaintiffs' claim that SPD  
25 will unlawfully use less lethal munitions to control protests on  
26 the scale of those that occurred in 2020.

27 Even if SPD were to employ less lethal munitions for crowd  
28 control purposes in response to significant protests, there have

1 been substantial changes to SPD policy and training such that it  
2 is unlikely Plaintiffs' constitutional rights would be violated  
3 again. Since the George Floyd protests, California enacted Penal  
4 Code Section 13652. The law states that less lethal munitions may  
5 be used for crowd control only "if the use is objectively  
6 reasonable to defend against a threat to life or serious bodily  
7 injury to any individual . . . or to bring an objectively  
8 dangerous and unlawful situation safely and effectively under  
9 control." Cal. Penal Code § 13652(b). Moreover, police may only  
10 use less lethal munitions after they have complied with various  
11 requirements, including utilizing other de-escalation techniques,  
12 providing repeated and audible announcements regarding the intent  
13 to use such weapons, giving persons "an objectively reasonable  
14 opportunity" to leave, and making an "objectively reasonable  
15 effort" to identify persons engaged in violent acts and only  
16 target such individuals with less lethal munitions. Id. These  
17 post-2020 statutory requirements make a repeat of Plaintiffs'  
18 injuries unlikely, especially because SPD's policy or custom, as  
19 well as their training, now incorporate the demands of Section  
20 13652.

21 Also, SPD's First Amendment Manual requires the Incident  
22 Commander to approve the use of less lethal weapons in crowd  
23 management situations. California Government Code Section 7072  
24 requires SPD to issue an annual report summarizing the use of its  
25 military equipment, any complaints received, the results of  
26 internal audits, the quantity of each type of military equipment,  
27 and whether the department plans to acquire additional equipment.  
28 Cal. Gov't Code § 7072. Together, all these changes preclude the

1 Court from finding that there is a substantial risk of Plaintiffs'  
2 constitutional violations reoccurring.

3 Plaintiffs lack standing to seek injunctive relief. Because  
4 standing is a threshold issue, the Court need not consider the  
5 traditional factors for injunctive relief. Nonetheless, the Court  
6 examines these factors below to show that even if Plaintiffs had  
7 standing they still would not be entitled to injunctive relief.

8 2. Traditional Factors

9 A plaintiff seeking a permanent injunction must demonstrate:  
10 "(1) that it has suffered an irreparable injury; (2) that remedies  
11 available at law, such as monetary damages, are inadequate to  
12 compensate for that injury; (3) that, considering the balance of  
13 hardships between the plaintiff and defendant, a remedy in equity  
14 is warranted; and (4) that the public interest would not be  
15 disserved by a permanent injunction." eBay Inc. v. MercExchange,  
16 L.L.C., 547 U.S. 388, 391 (2006). Where the government is a  
17 party, elements (3) and (4) merge. Drakes Bay Oyster Co. v.  
18 Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014). The Court considers  
19 these elements in turn.

20 First, a plaintiff must show "that it has suffered an  
21 irreparable injury." eBay Inc., 547 U.S. at 391. A  
22 constitutional infringement often alone constitutes irreparable  
23 harm. Assoc. Gen. Contractors of Cal., Inc. v. Coal. for Econ.  
24 Equity, 950 F.2d 1401, 1412 (9th Cir. 1991). Because Plaintiffs'  
25 constitutional rights were violated, they have suffered an  
26 irreparable injury.

27 Second, a plaintiff must demonstrate "that remedies available  
28 at law, such as monetary damages, are inadequate to compensate for

1 that injury.” eBay Inc., 547 U.S. at 391. “[C]onstitutional  
2 violations cannot be adequately remedied through damages.”  
3 Stormans, Inc. v. Selecky, 586 F.3d 1109, 1138 (9th Cir. 2009)  
4 (citation omitted). Because Plaintiffs suffered constitutional  
5 violations, remedies available at law are inadequate to compensate  
6 for their injuries.

7 Third, where the government is a party, a plaintiff must show  
8 “that, considering the balance of hardships between the plaintiff  
9 and defendant, a remedy in equity is warranted” and “that the  
10 public interest would not be disserved by a permanent injunction.”  
11 eBay Inc., 547 U.S. at 391. “[I]t is always in the public  
12 interest to prevent the violation of a party’s constitutional  
13 rights.” Riley’s Am. Heritage Farms v. Elsasser, 32 F.4th 707,  
14 731 (9th Cir. 2022). “In each case, courts must balance the  
15 competing claims of injury and must consider the effect on each  
16 party of the granting or withholding of the requested relief. In  
17 exercising their sound discretion, courts of equity should pay  
18 particular regard for the public consequences in employing the  
19 extraordinary remedy of injunction.” Winter v. Nat. Res. Def.  
20 Council, Inc., 555 U.S. 7, 24 (2008) (cleaned up).

21 Plaintiffs’ proposed permanent injunction is extraordinary.  
22 It would prohibit SPD from issuing dispersal orders or making  
23 arrests at protests unless there is an “imminent threat of death  
24 or serious bodily injury.” ECF No. 132 at 4. It requires SPD to  
25 “fully incorporate all recommendations from the California  
26 Department of Justice” previously given to the Department. Id.  
27 It also grants the Office of Public Safety Accountability “full  
28 concurrent investigatory authority over complaints involving SPD

1 misconduct.” Id. The proposed injunction further requires SPD to  
2 “amend all policies, guidance and training materials” to reflect  
3 these new requirements. Id. There would be significant public  
4 consequences in employing this extraordinary relief, as SPD would  
5 need to overhaul its policies and training. On the other hand,  
6 there is a minimal impact on Plaintiffs of withholding injunctive  
7 relief. As explained above, there is not a significant risk of  
8 their harm reoccurring. Because of the many changes to SPD  
9 policies and training, Plaintiffs are unlikely to experience the  
10 same constitutional violations at protests in Sacramento today and  
11 in the future. Accordingly, the balance of hardships weighs  
12 heavily in Defendants’ favor. See Winter, 555 U.S. at 24.

13 Because Plaintiffs have not satisfied the traditional factors  
14 for injunctive relief, they are not entitled to a permanent  
15 injunction even if they had demonstrated standing.

16 C. Declaratory Relief

17 Plaintiffs’ “failure to establish a likelihood of future  
18 injury similarly renders their claim for declaratory relief  
19 unripe.” See Hodgers-Durgin, 199 F.3d at 1044. “A plaintiff  
20 threatened with future injury has standing to sue if the threatened  
21 injury is certainly impending, or there is a substantial risk that  
22 the harm will occur.” McGee v. S-L Snacks Nat’l, 982 F.3d 700, 709  
23 (9th Cir. 2020). As explained above, see supra Part III.B, the  
24 evidence does not establish a substantial risk of Plaintiffs’ harm  
25 reoccurring. As such, Plaintiffs do not have standing for  
26 declaratory relief.

27 IV. CONCLUSIONS OF LAW

28 For the reasons set forth above, the Court concludes as

1 follows:

2 1. SPD officers violated the Fourth Amendment rights of  
3 Plaintiffs by using excessive force.

4 2. Defendants are liable for those constitutional violations  
5 on the basis of custom and policy, failure to discipline, and  
6 failure to train.

7 3. Plaintiffs do not have standing for injunctive relief.

8 4. Plaintiffs do not satisfy the requirements to be entitled  
9 to injunctive relief.

10 5. Plaintiffs do not have standing for declaratory relief.

11 V. ORDER

12 Given the Court's findings of fact and conclusions of law,  
13 Plaintiffs are not entitled to an order granting a permanent  
14 injunction against Defendants. Judgment on Plaintiffs' prayer for  
15 injunctive relief is entered in favor of Defendants.

16 IT IS SO ORDERED.

17 DATED: May 19, 2025

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20 JOHN A. MENDEZ  
21 SENIOR UNITED STATES DISTRICT JUDGE  
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